

Westerville, OH Code of Ordinances

CHAPTER 191
Earned Income Tax

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CROSS REFERENCES

Finances, taxation and debt - see CHTR. Art. VIII

Municipal income taxes - see Ohio R.C. Ch. 718

191.01 DEFINITIONS.

As used in this chapter, the following words shall have the meanings ascribed to them in this section, except as and if the context clearly indicates or requires a different meaning. The singular shall include the plural and the masculine gender shall include the feminine and the neuter genders.

- (a) "Association" means a partnership, limited partnership, or any other form of unincorporated enterprise owned by two or more persons.
- (b) "Business" means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, fiduciary, trust, association, corporation or any other entity.
- (c) "Corporation" means a corporation or joint stock association organized under the laws of the United States, State of Ohio, or any other state, territory or foreign country or dependency.
- (d) "Employer" means an individual, partnership, association, corporation, governmental body, unit or agency or any other entity whether or not organized for profit, that employs one or more persons on a salary, wage, commission or other compensation basis.
- (e) "Employee" means one who works for wages, salary, commissions or other type of compensation in the service of an employer.
- (f) "Fiscal year" means an accounting period of twelve months or less ending on any day other than December 31.
- (g) "Gross receipts" means the total income from any source whatsoever.
- (h) "Net profits" means the net gain from the operation of a business, profession, enterprise or other activity, whether or not such business, profession, enterprise or other activity is conducted for profit or is ordinarily conducted for profit, after provision for all ordinary and necessary expenses either

paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes without deduction of taxes imposed by this chapter, Federal, State or other taxes based on income; and in the case of an association, without deduction of salaries paid to partners, and other owners; and otherwise adjusted to the requirements of this chapter.

(i) "Nonresident individual" means an individual who is not domiciled in the City and whose usual place of abode is outside the City.

(j) "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the City.

(k) "Person" means every natural person, partnership, fiduciary, association or corporation. Whenever used in any clause prescribing and imposing a penalty, person as applied to any unincorporated entity means the parties or members thereof, and as applied to corporations, the officers thereof.

(l) "Place of business" means any bonafide office other than a mere statutory office, factory, warehouse or other place which is occupied and used by the taxpayer in carrying on any business activity individually or through any one or more of his regular employees regularly in attendance.

(m) "Resident individual" means any individual who is domiciled in the City or whose usual place of abode is in the City.

(n) "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the City.

(o) "Taxable income" means wages, salaries, commissions and other compensation paid by an employer or employers before any deductions and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of this chapter.

(p) "Taxable year" means the calendar year or the fiscal year on the basis of which the net profits are to be computed under this chapter and, in the case of a return for a fractional part of a year, the period for which such return is required to be made.

(q) "Taxpayer" means any person required to file a return or pay a tax pursuant to this chapter.

(r) Wages means "Qualifying wages", as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with section 718.03(A) of the Ohio Revised Code.

(s) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions.

(t) "Pass-through entity" means a partnership, limited liability company, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code.

(Ord. 04-52. Passed 12-7-04.)

191.02 IMPOSITION OF TAX.

To provide for the purposes of general municipal operations, maintenance, new equipment and capital improvements of the City, there is hereby levied a tax at the rate of one half percent per year upon the following:

(a) All salaries, wages, commissions and other compensation earned on and after November 1, 1971, by residents of the City.

(b) All salaries, wages, commissions and other compensation earned or received on and after November 1, 1971, by nonresidents of the City for work done or services performed or rendered in the City.

(c) (1) On the net profits earned on and after November 1, 1971, of all unincorporated businesses, pass-through entities, professions or other activities conducted by residents of the City.

(2) On the net profits earned on and after November 1, 1971, of all unincorporated businesses, pass-through entities, professions or other activities conducted in the City by nonresidents.

(3) For the purposes of subparagraphs (1) and (2) hereof, an association shall not be taxable as an entity, but any member thereof who is a resident of the City shall be taxed individually on his entire share, whether distributed or not, of the annual net profits of the association, and any nonresident member thereof shall be taxed individually only on that portion of his share, whether distributed or not of the annual net profits of the association and is derived from work done, services performed or rendered, and business or other activities conducted in the City.

(d) On the net profits on and after November 1, 1971, of all corporations, estates, trust and limited partnerships, derived from work done or services performed or rendered, ordinary gains from the operation of and/or the complete or partial sale or disposition of the assets of a business, profession, or enterprise or other activity (whether or not such business, profession, enterprise or other activity is conducted for profit or is ordinarily conducted for profit) and business or other activities conducted in the City, whether or not such corporations, estates, trusts and limited partnerships have their principal or other place of business located in the City.

(e) Payments made to current and former employees by an employer as accrued benefits and/or vacation wages are taxable. Payments made to any current or former employee by an employer under a wage continuation plan during periods of disability or sickness, are taxable.

(Ord. 04-52. Passed 12-7-04.)

191.021 ADDITIONAL TAX.

Effective on July 1, 1983, in addition to the tax imposed by Section 191.02, there is levied an additional tax of one-half percent (1/2%) upon those classes of salaries, wages, commissions, rents, compensation and profits set forth in Section 191.02, for the purpose of the daily operation of the Police Division, street maintenance and improvements, traffic signalization, general municipal operations and maintenance.

(Approved by voters 6-7-83.)

191.022 ADDITIONAL TAX.

Commencing on January 1, 1999 for the period January 1, 1999 through December 31, 2020, in addition to the tax imposed by Section 191.02 and Section 191.021 there is levied an additional tax of one-quarter of one percent (1/4%) upon those classes of salaries, wages, commissions, rents, compensation and profits set forth in Section 191.02, for the purpose of constructing, equipping and furnishing park and recreational facilities, acquiring and improving real estate for such facilities, paying debt service for such purposes, and paying costs of operating and maintaining park and recreational facilities and activities.

(Ord. 01-71. Passed 11-27-01.)

191.023 ADDITIONAL TAX.

Effective on January 1, 2009, in addition to the tax imposed by Sections 191.02, 191.021 and 191.022 there is levied an additional tax of three-quarters of one percent (3/4%) upon those classes of salaries, wages, commissions, rent, compensation and profits set forth in Section 191.02, for the purpose of general municipal operations and services, street maintenance, capital improvements and related costs.

(Ord. 08-12. Passed 11-18-08.)

191.03 ALLOCATION OF NET PROFITS.

(a) This section does not apply to taxpayers that are subject to and required to file reports under Chapter 5745 of the Ohio Revised Code. Net profit from a business or profession conducted both within and without the boundaries of Westerville "The City" shall be considered as having a taxable situs in the City for purposes of City income taxation in the same proportion as the average ratio of the following:

(1) The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in the City during the taxable period to the average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight.

(2) Wages, salaries and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the City, to wages, salaries and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed;

(3) Gross receipts of the business or profession from sales made and services performed during

the taxable period in the City to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

(4) Adding together the percentages determined in accordance with subsections (a)(1)(2) and (3) hereof, or such of the aforesaid percentages as are applicable to the particular taxpayer and dividing the total so obtained by the number of percentages used in deriving such total.

(b) In the event that the foregoing allocation formula does not produce an equitable result under the formula provided for herein, the Finance Director or his delegate, upon application of the taxpayer, shall have the authority to substitute other factors or methods calculated to effect a fair and proper apportionment.

(c) As used in this chapter, "sales made in the City" means:

(1) All sales of tangible personal property which is delivered within the City regardless of where title passes if shipped or delivered from a stock of goods within the City.

(2) All sales of tangible personal property which is delivered within the City regardless of where title passes even though transported from a point outside the City if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City and the sales result from such solicitation or promotion.

(3) All sales of tangible personal property which is shipped from a place within the City to purchasers outside the City regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(Ord. 04-52. Passed 12-7-04.)

191.04 LEVY OF TAX.

The tax shall be levied, collected and paid with respect to the salaries, wages, commissions, rents and other compensation earned on and after November 1, 1971, and with respect to the net profits of business, pass-through entities, profession or other activity earned on and after November 1, 1971, with respect to the tax imposed by this chapter. However, where the fiscal years of the business, pass-through entities, profession or other activity differ from the calendar year, the tax shall be applied to that part of the net profits for the fiscal year as shall be earned on and after November 1, 1971, with respect to the tax imposed by this chapter, to the close of the taxpayer's fiscal year. Thereafter, the taxpayer shall report on its fiscal year basis.

Where the fiscal year of a business, pass-through entities, profession or other activity is other than a calendar year, in computing the initial tax the profits of such taxpayer shall be determined by dividing the annual profits by twelve and multiplying the quotient by the number of months within the period commencing November 1, 1971, with respect to the tax imposed by this chapter, and ending at the conclusion of such fiscal year.

Except with respect to effective dates, "tax" or "taxes" as used in this Chapter, unless the context clearly indicates otherwise, means the tax imposed by this chapter.

(Ord. 04-52. Passed 12-7-04.)

191.05 RETURN AND PAYMENT OF TAX.

(a) Each taxpayer who engages in business, or whose salaries, wages, commissions, rents and other compensation are subject to the tax imposed by this chapter shall, whether or not a tax is due thereon, make and file a return on or before April 15 of each year with the Department of Finance, Income Tax Division on a form furnished by or obtained from the Income Tax Division, setting forth the aggregate amount of salaries, wages, commissions, rents and other compensation earned and/or net profits earned and/or gross income from such business less allowable expenses in the acquisition of such gross income earned during the preceding year and subject to the tax, together with such other pertinent information as the Finance Director may require. However, when the return is made for a fiscal year or other period different from the calendar year, the return shall be made on or before the last day of the fourth month after the close of such fiscal year or other period.

(b) Commencing with taxable years beginning subsequent to December 31, 1994 the net loss from an unincorporated business activity may not be used to offset salaries, wages, commissions or other compensation. However, if a taxpayer is engaged in two or more taxable business activities to be included in the same return, the net loss of one unincorporated business activity (except any portion of a loss separately reportable for municipal tax purposes to another taxing entity) may be used to offset the profits of another for purposes of arriving at overall net profits. These same provisions shall apply to joint returns filed by husband and wife.

A nonresident's income is only subject to the Westerville City income tax to the extent it was earned within Westerville.

(c) If a net operating loss has been sustained in any taxable year such losses may not be carried forward or backward to any other taxable year.

(d) Affiliated corporations may not deduct a loss from any other corporation having a taxable profit. Operations of any affiliated corporation may not be taken into consideration in computing net profits or the Business Allocation Percentage Formula of another.

(e) A taxpayer who pays their business expenses from their commissions or other compensation, without reimbursement from their employer, may deduct from their gross commissions or other compensation business expenses allowed by the Internal Revenue Service for Federal Income Tax purposes, but only to the extent that such expenses are incurred in earning commissions or other compensation subject to the tax imposed by this section.

(f) The taxpayer making a return shall, at the time of the filing thereof, pay to the City the amount of taxes shown as due thereon; however where any portion of the tax so due has been deducted at the source pursuant to the provisions of Section 191.07 or where any portion of such tax has been paid by the taxpayer pursuant to the provisions of Section 191.08, credit for the amount so paid shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing the return.

(g) A taxpayer who has overpaid his income tax in any taxable year may request a refund provided there is no other tax liability and provided, further, that no amount of less than one dollar and one cent (\$1.01) will be refunded or collected.

(h) The Finance Director or his delegate shall have the authority to extend the time for filing of the annual return upon the request of the taxpayer for a period not to exceed six months, or one month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal income tax return. The Finance Director or his delegate may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon by the date the return is normally due.

(i) In the case of a real estate investment trust and regulated investment company, taxable income shall be defined as all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income.

(j) If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute income as if the taxpayer were a C corporation, except:

(1) Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as a deductible expense; and

(2) Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

(k) Extensions.

(1) Any taxpayer that has requested an extension for filing a federal income tax return may request an extension for the filing of a City income tax return by filing a copy of the taxpayer's federal extension request with the Finance Director or his delegate. Any taxpayer not required to file a federal income tax return may request an extension for filing a City income tax return in writing. The request for extension must be filed on or before the original due date for the annual return. If the request is granted, the extended due date of the City tax return shall be the last day of the month following the month to which the due date of the federal income tax return has been extended.

(2) The Tax Administrator may deny a taxpayer's request for extension if the taxpayer:

A. Fails to timely file the request; or

B. Fails to file a copy of the federal extension request (if applicable); or

C. Owes the City any delinquent income tax, penalty, interest or other charge for the late payment or nonpayment of income tax; or

D. Has failed to file any required income tax return, report, or other related document for a prior tax period.

(3) The granting of an extension for filing a City tax return does not extend the due date as provided in this section for payment of the tax; hence, penalty and interest may apply to any unpaid tax during the period of extension at the rate set out by Section 191.13. Any extension by the Tax Administrator shall be granted upon the condition that declaration filing and payment requirements have been fulfilled.

(Ord. 04-52. Passed 12-7-04.)

191.06 AMENDED RETURN AND REFUNDS FOR OVERPAYMENT.

Where an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid subject to the requirements and/or limitations contained in Section 191.05(e) such amended return shall be on a form obtainable on request from the Income Tax Division. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

Within three months from the final determination of any Federal tax liability affecting the taxpayer's City tax liability, such taxpayer shall make and file an amended City return showing income subject to the City tax based upon such final determination of Federal tax liability, and pay any additional tax shown due thereon or make a claim for refund of any overpayment.

Within thirty days of receiving a tax refund from another municipality for which credit has been claimed on a taxpayer's City return, as permitted by Section 191.16, such taxpayer shall make and file an amended City return and pay any additional tax shown thereon.

No refund shall be allowed unless a written request is presented to the Finance Director or his delegate within three years of the date the taxes were due.

(Ord. 04-52. Passed 12-7-04.)

191.07 COLLECTION AT SOURCE.

(a) Each employer within or doing business within the City, shall deduct at the time of payment of such salaries, wages, commissions or other compensation, the tax levied under this chapter. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld.

(b) Employers shall pay to the City all income taxes withheld or required to be deducted and withheld on either a monthly or quarterly basis depending on the amount of taxes involved according to the following payment schedule.

(1) Semi-monthly payments of the taxes withheld are to be made by an employer if (i) the total taxes deducted in the prior calendar year were \$12,000 or more, or (ii) the amount of taxes deducted for any month in the preceding quarter exceeded \$1,000. Such payments shall be paid to the City within three banking days after the fifteenth and last day of each month.

(2) Monthly payments of taxes withheld shall be made by an employer if the taxes withheld in the prior calendar year were more than one thousand one hundred ninety-nine dollars (\$1,199) or if the taxes withheld during any month of the preceding quarter exceeded one hundred dollars (\$100).

Such payments shall be paid to the City within fifteen days after the close of each calendar month.

(3) All employers not required to make monthly or semi-monthly payments of taxes withheld under this section, shall make quarterly payments no later than the last day of the month following the

end of each quarter.

(4) Effective July 1, 2005, every agent (third party) representing an employer filing monthly or semi-monthly as prescribed by the City, shall make payment by the electronic funds transfer (EFT) methods prescribed by the City, unless exemption from this requirement is given by the Finance Director or his delegate.

(c) Each employer who maintains a place of business in the City and other branches, must also withhold the tax from employees residing in the City but working at another branch of the employer, even though the payroll records and place of payment are outside the City.

(d) Every employer doing business within the City on a temporary basis shall pay to the City all income taxes withheld or required to be deducted and withheld on a monthly basis, regardless of the amount of taxes involved. Such payment shall be paid to the City within fifteen days after the close of each calendar month. An employer is "doing business within the City on a temporary basis" when the employer maintains a place of business in the City or does business within the City for a period which the employer does not expect to exceed one year.

(e) The employer shall make and file a return on a form furnished by the Income Tax Division, showing the amount of tax deducted by the employer from the salaries, wages, commissions or other compensation of any employee and paid by the employer to the City.

(f) Each employer on or before February 28, unless written request for thirty days' extension is made to and granted by the Finance Director following any calendar year in which such deductions have been made, or should have been made by any employer shall file with the Finance Director or his delegate an information return (Westerville Withholding Statement of Wages Paid and Westerville Income Tax Withheld), for each employee from whom income tax has been or should have been withheld showing the name and address of the employee, the total amount of salaries, wages, commissions and other compensation paid to the employee during the year, and the amount of City income tax withheld from each employee. In addition, each Form (W-2) shall show the employer's name, address, and City account number. An adding machine tape or list of amount of tax withheld and taxable wages as shown on the W-2's shall be attached with the number of W-2's shown. Any return not so filed shall be subject to a late filing penalty of five dollars (\$5.00) per day for each and every day they remain in violation to a maximum of three hundred dollars (\$300.00). In addition to the late filing penalty, any return which remains un-filed more than two months after its due date shall be subject to the penalties provided under Section 191.14.

(g) Any person, including corporations, partnerships, employers, estates and trusts, who files 250 or more information returns of form W-2 for any calendar year, must file these returns using magnetic media or such other process as determined acceptable to the Finance Director. All requirements apply separately to both original and corrected forms.

(h) In addition to the above wage reporting requirements, any person paying money to an individual or independent contractor shall report such payment. The information should be reported on Federal Form 1099 and filed yearly with the Tax Administrator on or before February 28th. Any return not so filed shall be subject to a late filing penalty of five dollars (\$5.00) per day for each and every day they remain in violation to a maximum of three hundred dollars (\$300.00). In addition to the late filing penalty, any return which remains un-filed more than two months after its due date shall be subject to the penalties provided under Section 191.14.

(i) Every employer or officer of a corporation is deemed to be a trustee for this City in collecting

and holding the tax required under this chapter to be withheld and the funds so collected by such withholding are deemed to be trust funds.

(j) The officer or the employee having control or supervision of or charged with the responsibility of filing the report and making payment is personally liable for failure to file the report or pay the tax due as required by this section. The dissolution of a corporation does not discharge an officer's or employee's liability for a failure of the corporation to file returns or pay tax due prior to dissolution.

(Ord. 04-52. Passed 12-7-04.)

191.08 DECLARATIONS.

Every person who anticipates any taxable income which is not subject to Section 191.07 or who engages in any business, profession, enterprise or activity subject to the tax imposed by this chapter, and who expects to make a payment with declaration of one hundred dollars (\$100.00) or more for all declarations shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any (not to be less than one hundred dollars (\$100.00) per year). However, if a person's income is wholly from wages, salaries, commissions or other compensation from which the tax will be withheld and remitted to the City in accordance with Section 191.07, such person need not file a declaration.

Such declarations shall be filed according to one of the following three alternatives. On April 15 of each year the taxpayer must elect one of the alternatives and remain with that alternative for a minimum of one year.

Alternate 1: The taxpayer shall file a declaration and payment for the first six months on April 15 of that year and for the second six months on October 31 of that year. Fiscal taxpayers shall file declarations on the fifteenth day of the fourth and tenth month of their fiscal year accordingly.

Alternate 2: The taxpayer shall file a declaration and payment quarterly in accordance with the Federal income tax on April 15, July 31, October 31, and January 31 of the succeeding year for a quarter of a year. Fiscal taxpayers shall pay on the fourth, sixth, ninth and the first month of the following year accordingly.

Alternate 3: One declaration shall be filed, with payment on April 15 for the entire year. Fiscal taxpayers shall pay on the fifteenth of the fourth month according to their fiscal year.

Such declarations shall be filed upon a form furnished by, or obtainable from the Department of Finance, Income Tax Division.

On or before the fifteenth day of the fourth month of the year following that for which such declaration(s) was filed, an annual return shall be filed and any balance which may be due the City shall be paid therewith in accordance with the provisions of Section 191.05.

A declaration of estimated tax which is less than ninety percent (90%) of the tax due as shown on the annual return shall not be considered filed in good faith. The difference shall be subject to penalties and interest as provided for in Section 191.13.

(Ord. 04-52. Passed 12-7-04.)

191.09 DUTIES OF THE FINANCE DIRECTOR.

(a) It shall be the duty of the Finance Director to collect and receive the tax imposed by this chapter in the manner prescribed by this chapter, and it shall also be his duty to keep an accurate record showing the payment received by him from each taxpayer and the date of the payment.

(b) The Finance Director or his delegate is hereby charged with the administration and enforcement of the provisions of this chapter and they are hereby authorized to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this chapter, including provisions for the reexamination and correction of returns and payments.

In any case where a taxpayer has failed to file a return or failed to pay the tax due on a return or has filed a return which does not show the proper amount of tax due, the Finance Director or his delegate may determine the amount of tax appearing to be due the City from the taxpayer based on any information in his possession and shall send to such taxpayer a written statement showing the amount of tax so determined together with interest and penalties thereon, if any.

(c) The Finance Director or his delegate is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments when the taxpayer has proved to the Finance Director that, due to certain hardship conditions he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under this chapter.

(Ord. 01-71. Passed 11-27-01.)

191.10 INVESTIGATIVE POWERS OF THE FINANCE DIRECTOR.

(a) The Finance Director or his delegate or any authorized employee is hereby authorized to examine the books, papers, records and Federal income tax returns of any employer or of any taxpayer or person subject to, or who the Finance Director or his delegate believes is subject to the provisions of this chapter, for the purpose of verifying the accuracy of any return made, or, if any return was made to ascertain the tax due under this chapter, and every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish upon written request by the Finance Director or his delegate, or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

The Finance Director or his delegate is hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or would have been returned for taxation of any transaction tending to effect such income, and for this purpose may compel the production of books, papers, records and Federal income tax returns and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.

(b) The Finance Director or his delegate or any authorized employee is hereby authorized to institute procedures to determine the associations, businesses, corporations, persons, employers and employees subject to the provisions of this chapter, and in connection therewith, to require that all

persons, as defined in this chapter shall provide in writing to the Finance Director such information as the Director deems necessary to provide for the enforcement of this chapter. The refusal to provide information requested by the Finance Director, shall be deemed a violation of this chapter, punishable as provided in Section 191.99.

(Ord. 01-71. Passed 11-27-01.)

191.11 TAX INFORMATION CONFIDENTIAL.

Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, except for official purposes, or except in accordance with proper judicial order or except as hereinafter provided. The Finance Director or his delegate may furnish the Internal Revenue Service, Treasury Department of the United States, the Tax Commissioner of Ohio and the duly authorized income tax administrator of any other city or state with copies of the returns filed. The Finance Director or his delegate is also authorized to enter into agreements for the exchange of any information with any of the foregoing Federal, State or City officials. No person shall divulge such information.

(Ord. 01-71. Passed 11-27-01.)

191.12 COLLECTION OF UNPAID TAXES.

All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. The Finance Director or his delegate is authorized, in addition to his other duties, to institute civil lawsuits to collect delinquent taxes due and owing the City by virtue of the provisions of this chapter. The Finance Director or his delegate is authorized to waive penalties and interest and compromise tax liability and the right to accept waiver of State statutes of limitations.

(Ord. 01-71. Passed 11-27-01.)

191.13 INTEREST AND PENALTIES.

All taxes imposed by this chapter and remaining unpaid after they become due shall bear interest, in addition to the amount of unpaid tax, at the rate of twelve percent (12%) per year, and the taxpayers upon whom such taxes are imposed by this chapter shall be liable, in addition thereto, to a penalty of ten percent (10%) of the amount of unpaid tax.

Any taxpayer or employer shall have twenty (20) days after assessment of a proposed penalty and/or interest charge to file a written protest with the Finance Director or his delegate showing cause why such penalty and/or interest should not be imposed.

A penalty shall not be assessed on an additional tax assessment made by the Finance Director or his delegate when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Finance Director; further, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a Federal audit, provided an amended return is filed and the additional tax is paid within three months after final determination of the Federal tax liability.

(Ord. 01-71. Passed 11-27-01.)

191.14 VIOLATIONS.

(a) Any person subject to the provisions of this chapter who shall fail, neglect or refuse to make any return or declaration, or any employer who shall fail, neglect or refuse to deduct and withhold the taxes or pay the taxes imposed by this chapter or any taxpayer who shall fail, neglect or refuse to pay the tax, interest and penalties imposed by this chapter, or any person who shall refuse to permit the Finance Director or his delegate to examine the books, records and papers of a taxpayer, or any person who shall knowingly make an incomplete, false or fraudulent return, or who shall attempt to do anything whatever to avoid the payment of the whole or any part of the tax under this chapter shall be deemed guilty of a fourth degree misdemeanor for a first offense and a second-degree misdemeanor for a second or subsequent offense. The failure of an employer or taxpayer to receive or procure a return or declaration form, shall not excuse him from making a return or declaration or paying the tax levied under this chapter.

(b) When a corporation or any organization other than a natural person is convicted of an offense pursuant to this chapter, it shall be fined not more than One Thousand Dollars (\$1,000.00) for the first offense and shall be fined not more than Five Thousand Dollars (\$5,000.00) for a second or subsequent offense.

(c) An officer, agent or employee of a corporation or other organization may be prosecuted for an offense committed by such corporation or other organization if he acts with the kind of culpability required for the commission of the offense, and any of the following apply:

(1) In the name of the organization or in its behalf, he engages in conduct constituting the offense, or causes another to engage in such conduct, or tolerates such conduct when it is of a type for which he has direct responsibility.

(2) He has primary responsibility to discharge a duty imposed on the organization by law, and such duty is not discharged.

(d) When a person is convicted of an offense under any of the conditions of Subsection (c) (1) or (2), he is subject to the same penalty as if he had acted in his own behalf.

(Ord. 04-52. Passed 12-7-04.)

191.15 EXEMPTIONS.

The provisions of this chapter shall not be construed to tax the active military pay or allowances of members of the armed forces of the United States, or the income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities.

The tax provided for herein shall not be levied on the personal earnings of any natural person under eighteen years of age.

(Ord. 01-71. Passed 11-27-01.)

191.16 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

Every individual taxpayer who resides in the City but who received net profits, salaries, wages, commissions or other compensation for work done or service performed or rendered outside the City, if it is made to appear that he has paid a municipal income tax or excise tax based on income, on such net profits, salaries, wages, commissions or other compensation in another municipality, shall be allowed a credit for the amount so paid by him or in his behalf in such other municipality, this credit to be applied to the extent of one-hundred percent (100%) of the tax levied by this chapter, by reason of such net profits, salaries, wages, commissions or other compensation earned in such other municipality where such tax is paid.

(Ord. 01-71. Passed 11-27-01; Ord. 08-13. Passed 6-17-08.)

191.17 CONTRACT PROVISIONS.

No contract on behalf of the City for works or improvements of the City shall be binding or valid unless such contract contains the following provisions:

"Said _____ hereby further agrees to withhold all City income taxes due or payable under the provisions of the Income Tax Ordinance, for wages, salaries, and commissions paid to its employees and further agrees that any of its sub-contractors shall be required to agree to withhold any such City income taxes due under said chapter for services performed under this contract."

(Ord. 01-71. Passed 11-27-01.)

191.18 ALLOCATION OF FUNDS.

Except as otherwise provided through legislation, the funds collected under the provisions of this chapter shall be deposited in the General Fund and shall be disbursed for the following purposes and in the following order:

- (a) Such part thereof as shall be necessary to defray all costs of collecting the taxes levied by this chapter and enforcing the provisions thereof.
- (b) The balance of such fund, after providing for the requirements in subsection (a) hereof, shall be transferred into the General Fund of the City.

(Ord. 04-52. Passed 12-7-04.)

191.19 METHOD OF RATE INCREASE.

The rate of tax provided in Section 191.02 shall not be increased without approval by a vote of the electorate.

(Ord. 01-71. Passed 11-27-01.)

191.20 SAVINGS CLAUSE.

If any sentence, clause, section or part of this chapter, or any tax agent, any individual or any of the several groups specified herein is found to be unconstitutional, illegal or invalid such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

(Ord. 01-71. Passed 11-27-01.)

191.21 MANDATORY REGISTRATION.

(a) Each new resident of the City shall register with the Director of Finance of the City to become subject to the Westerville City income tax within thirty days of residence in the City. Any person who violates this subsection (a) shall be subject to a fine of five dollars (\$5.00) a day for each and every day they remain in violation, up to a maximum of fifty dollars (\$50.00).

(b) All employers, contractors or subcontractors who do work in the City shall register with the Director of Finance and shall present him a list of all employees, subcontractors, contractors or others who may do work for them whose profits, wages or earnings are not presently subject to withholding of the Westerville City income tax. Any person who violates this sub-section (b) shall be subject to a fine of five dollars (\$5.00) a day for each and every day they remain in violation, up to a maximum of three hundred dollars (\$300.00).

(c) On October 1, 1975, and on every year thereafter, all landlords who rent property in Westerville must submit an up-to-date list of their tenants to the Director of Finance of the City. This list is not required if the tenants are responsible for their own utility payments. Any person who violates this sub-section (c) shall be subject to a fine of five dollars (\$5.00) a day for each and every day they remain in violation, up to a maximum of seventy-five dollars (\$75.00).

(Ord. 01-71. Passed 11-27-01.)

191.22 MANDATORY FILING.

All persons residing or doing business within the City of Westerville shall file a tax return on a form prescribed by the Director of Finance for the collection of the City income tax. Any person who fails to make and/or file a return when due shall be subject to a late filing penalty of five dollars (\$5.00) per day for each and every day they remain in violation to a maximum of three hundred dollars (\$300.00). In addition to the late filing penalty, any return which remains un-filed more than two months after its due date shall be subject to the penalties provided under Section 191.14.

(Ord. 01-71. Passed 11-27-01.)

191.23 ESTABLISHMENT OF BOARD OF REVIEW.

(a) A Board of Review, consisting of three members and an one alternate, who shall be resident individuals appointed by the City Council, is hereby created. The alternate member will replace a member who disqualifies himself or herself based upon a conflict of interest or who can not attend. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and keep a record of its transactions. Any hearing of the Board may be conducted privately and the provisions of Section 191.11 hereof with reference to the confidential character of information required to be disclosed by the chapter shall apply to such matters as may be heard before the Board of Review.

(b) Any person dissatisfied with any ruling or decision of the Tax Administrator, which is made under the authority conferred by this chapter, may appeal there from to the Board within 30 days from the announcement of such ruling or decision by the Tax Administrator and the Board shall, on hearing, have jurisdiction to affirm, reverse, or modify any ruling or decision or any part thereof. Such hearing shall be scheduled within 45 days from the date of appeal. The Board's ruling must be made within 90 days from the date of the hearing and shall be in writing and filed with the Tax Administrator. The concurrence of two members is required to reverse or modify any ruling or decision of the Tax Administrator.

(Ord. 00-72. Passed 11-7-00.)

191.99 PENALTY.

(a) Whoever violates any of the provisions of this chapter for which no penalty is otherwise provided shall be guilty of a fourth degree misdemeanor on a first offense, and a second-degree misdemeanor for a second and subsequent offense.

(b) Whoever violates Section 191.11 shall be deemed guilty of a first-degree misdemeanor. Each disclosure shall constitute a separate offense.

(c) Whoever violates Section 191.07 shall be deemed guilty of a first-degree misdemeanor. Each violation shall constitute a separate offense.

(Ord. 01-71. Passed 11-27-01.)

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